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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

190250-1690

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on \_\_\_\_\_

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Application Number

10/735,405

Filed

December 12, 2003

First Named Inventor

Parker

Art Unit

3627

Examiner

Danneman, Paul

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record. Registration number 58,169

☐ attorney or agent acting under 37 CFR 1.34. \_\_\_\_\_  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

/BAB/

Signature

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Typed or printed name

(770) 933-9500

Telephone number

July 21, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:

Parker

Serial No.: 10/735,405

Filed: December 12, 2003

Confirmation No.: 2122

Group Art Unit: 3627

Examiner: Danneman, Paul

Docket No.: 190250-1690

For: Payroll Based on Communication Switch Statistics

**REMARKS IN SUPPORT OF  
PRE-APPEAL BRIEF CONFERENCE**

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Applicant submits the following remarks in support of a Request for a Pre-Appeal Brief Conference.

### **REMARKS**

Applicant submits that the following clear legal deficiency exists in the rejection. Namely, the previous Office Action improperly uses the hindsight gleaned from the instant application to argue that the elements of the independent claims are obvious in view of the teachings of *McDuff*. Applicant respectfully submits that one of ordinary skill in the art, using the disclosure of *McDuff*, would not have integrated the set of switching statistics with the set of work statistics to determine operator efficiency without using hindsight gleaned from Applicant's disclosure. Therefore, the rejection is improper, the rejection should be withdrawn, and the claims allowed.

#### **I. Status**

Claims 1, 3-15, 17, and 19-22 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350). Claims 2, 16, and 18 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350) in view of *Stuart, et al.* (U.S. Publication No. 2001/0032120).

#### **II. Rejections of Independent Claims Under 35 U.S.C. §**

**Independent claim 1** recites:

1. A payroll system comprising:  
logic configured to obtain a set of switching statistics from a database of a communications switch;  
logic configured to obtain a set of work statistics of an operator;  
***logic configured to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics;***

logic configured to determine when the operator efficiency parameter exceeds an expected efficiency parameter.  
(Emphasis added).

Applicants respectfully submit that independent claim 1 is allowable for at least the reason that the rejection in view of *McDuff* is improper. Even if, assuming for the sake of argument, *McDuff* discloses the gathering of general statistics, *McDuff* fails to disclose the specific function of integrating the set of switching statistics with the set of work statistics. Moreover, Applicant respectfully submits that, regardless of which statistics are used, the function of integrating any statistics is not obvious in light of *McDuff*. Applicant respectfully submits that without using hindsight gleaned from Applicant's disclosure, gathering useful data fails to suggest determining operator efficiency from the data. The data is simply collected and reported. Agent efficiency levels are never even alluded to in *McDuff*.

The Office Action admits that the reference does not disclose integrating the set of switching statistics with the set of work statistics to determine an operator efficiency parameter. However, the Office Action alleges that the element is obvious because the reference discloses (1) gathering statistics regarding agent calling activity, (2) statistics gathered include average handling time, average work time, average talk time, etc., and (3) the statistics are used to generate reports useful to a supervisor or other manager. Applicant respectfully asserts that a report that presents the raw data in a pie chart or a graphical representation is useful to a supervisor and manager. *McDuff* doesn't suggest any more than presenting the statistics in a report. *McDuff* doesn't mention operator

efficiency at all. *McDuff* surely doesn't suggest integrating one particular statistic with a second particular statistic to determine operator efficiency.

Additionally, since, as shown above, *McDuff* fails to suggest the determination of operator efficiency, *McDuff* certainly fails to *determine when the operator efficiency parameter exceeds an expected efficiency parameter*.

As the cited reference does not disclose, teach, or suggest, either implicitly or explicitly, all the elements of claim 1, the rejection should be withdrawn for at least these reasons. Independent claims 8 and 17 are allowable for similar reasons.

For at least the reason that the independent claims are allowable over the cited references of record, the dependent claims are a matter of law for at least the reason that the dependent claims contain all the features of the independent claims. Therefore, the rejection of the dependent claims should be withdrawn and the claims allowed.

**CONCLUSION**

For at least the reasons set forth above, favorable reconsideration and allowance, or the re-opening of prosecution on the merits of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, L.L.P.**

/BAB/

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